

1 BY MR. CARROLL:

2 Q The sports tier level of
3 distribution for Tennis Channel, do you
4 remember how many subs, subscribers you had
5 for The Tennis Channel at the sports tier
6 level in its first year?

7 A It would have been in its first
8 year, it just got started and it took a while
9 to ramp up, so I don't know what the exact
10 number was in the first year, but it would not
11 have been significant.

12 Q Any sense of a range?

13 A Probably less than [REDACTED].

14 Q Okay, I'm trying to get a sense
15 for how is it done over the years, the sports
16 tier distribution, generally, and The Tennis
17 Channel as a part of it. Have subscribers
18 grown over the years and can you give His
19 Honor some sense for how it's worked out in
20 terms of number of subscribers on the sports
21 tier?

22 A It has grown. It's at about [REDACTED]

1 [REDACTED] customers today.

2 JUDGE SIPPEL: Over what period of
3 time was that then?

4 THE WITNESS: This would have been
5 '05 to '10.

6 JUDGE SIPPEL: Thank you.

7 BY MR. CARROLL:

8 Q And one other question, just to
9 come back to, under the terms of your
10 affiliation agreement, did Tennis Channel have
11 the right [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 A [REDACTED]

15 Q [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED]

18 A [REDACTED] [REDACTED]

19 [REDACTED]

20 Q [REDACTED]

21 [REDACTED]

22 A [REDACTED]

1 Q Now let me move forward in time
2 here to the following year, 2006, a year after
3 you've signed up the contract with Tennis
4 Channel. Does there come a time when you
5 learn about a new proposal Tennis Channel has
6 for you?

7 A Yes.

8 Q Tell us about that, please.

9 A Tennis Channel advised us that
10 they had done a deal with another distributor
11 involving a grant of equity and so they made
12 us what is termed an MFN offer, which means a
13 most favored nation's offer. We had a deal as
14 is typical, we had a provision in our Tennis
15 Channel deal that provided most favored
16 nation's protection. So if Tennis Channel did
17 a deal with a third party, a third party
18 distributor that was more favorable than the
19 deal they had done with us, they had an
20 obligation to come to us with the terms of
21 that deal.

22 So in conjunction with that

1 provision, they approached us with the terms
2 of a deal that they had done with another
3 distributor, in this case Dish Network.

4 Q Are the MFN-type provisions common
5 in the industry?

6 A Yes.

7 Q And why are they used? Why does a
8 distributor like you want to have an MFN
9 provision?

10 A Well, they're very, very common in
11 the cable industry. They're very common in
12 other industries. They help -- they actually
13 help programmers get distribution because to
14 the extent that a distributor may have a fear
15 that they're going to do a deal and then find
16 out later that they could have acquired the
17 same programming for less money, an MFN
18 protects the distributor. So an MFN says to
19 the distributor, go ahead and do this deal.
20 If I do a better deal later with somebody
21 else, you'll get the benefit of it. So you
22 can move forward. You can feel comfortable

1 moving forward and doing a deal with me.

2 Q When you did your deal with Tennis
3 Channel in 2005, how many other distributors
4 had done deals already with Tennis Channel?

5 A Time Warner and Cox. I don't know
6 if any others had at that time.

7 Q So you were still one of the early
8 ones?

9 A Yes.

10 Q And in 2005, had Dish, DirecTV,
11 Verizon, AT&T, had any of those entities done
12 deals with The Tennis Channel yet?

13 A No, I don't think so.

14 Q And from your perspective, does
15 the MFN provide you protection that by being
16 of the early ones to do the deal, you won't
17 discover later on that the later guys got a
18 better price, is that the concept?

19 A Yes, that's the idea.

20 Q So in 2006, they come to you,
21 Tennis Channel, and there's an MFN proposal,
22 is that right?

1 A Yes.

2 Q Did you know who they had done a
3 deal with that had triggered the MFN proposal?

4 A I don't know how I learned it. I
5 think they probably told us it was Dish
6 Network.

7 Q Dish Network. And what were the
8 terms of the MFN proposal that they made to
9 you? Do you remember generally?

10 A Yes. It involved basically two
11 components. It involved us increasing our
12 distribution of Tennis Channel by [REDACTED]
13 subscribers, so committing to an incremental
14 [REDACTED] subscribers. And in exchange for
15 that, there was a grant of equity, equity in
16 the Tennis Channel that -- excuse me. There
17 was an offer of equity to us if we agreed to
18 give them the additional [REDACTED].

19 JUDGE SIPPEL: Where did those [REDACTED]
20 [REDACTED] come from?

21 THE WITNESS: It was unspecified.
22 They could have come from any system.

1 JUDGE SIPPEL: I see.

2 THE WITNESS: They could have been
3 anywhere in the Comcast --

4 JUDGE SIPPEL: So they could have
5 made up the difference say by putting them --
6 putting Tennis Channel on other systems or --
7 I'm sorry, of using the Jacksonville model and
8 applying it to say five or six other systems
9 and give them the numbers.

10 THE WITNESS: That's absolutely
11 correct.

12 MR. PHILLIPS: Your Honor, I may
13 be a little slow in the uptake, the only thing
14 that I think that we're going to the specific
15 pricing, we may be going into some
16 confidential information.

17 JUDGE SIPPEL: I hear you.

18 MR. PHILLIPS: I don't know if Mr.
19 Carroll's questions may be asking for it. The
20 only person I know here that is not a party is
21 my own client's representative. So if you're
22 just talking about Tennis Channel offers, I

1 don't have a problem. But if you're going to
2 go into any other pricing terms that you
3 consider confidential, I've got to excuse my
4 client.

5 MR. CARROLL: No, we're okay. We
6 are just talking about the offer that your
7 client made to us and the terms of it.

8 May I proceed, Your Honor?

9 MR. PHILLIPS: And can I have an
10 understanding, Mr. Carroll, just that because
11 I know we've had these discussions that just
12 because the door is open that doesn't mean
13 that the public transcript comes out, we'll be
14 able to redact the price terms?

15 JUDGE SIPPEL: You come to me on
16 that one, absolutely.

17 MR. PHILLIPS: Okay.

18 JUDGE SIPPEL: Absolutely.

19 MR. PHILLIPS: That's all I wanted
20 to know.

21 JUDGE SIPPEL: I'm assuming that
22 if this becomes a problem, you're going to

1 have to let me know. It's going to go offline
2 here.

3 MR. PHILLIPS: We've had some
4 discussions on the question, Your Honor, of
5 whether or not -- if the door was open we
6 could still redact on the sensitive price
7 terms for The Tennis Channel. And I take it
8 that with what Your Honor just said --

9 MR. CARROLL: I have no issue with
10 that whatsoever.

11 JUDGE SIPPEL: Let him finish.

12 MR. PHILLIPS: I take it what Your
13 Honor just said that we can follow that
14 guidance that even though the door is open,
15 when it comes to sensitive price terms for
16 either side that we can still redact it.

17 JUDGE SIPPEL: You have absolute
18 license to redact. You have a hunting license
19 to redact.

20 (Laughter.)

21 JUDGE SIPPEL: My instruction is
22 only with respect to truly sensitive stuff.

1 MR. PHILLIPS: Of course.

2 JUDGE SIPPEL: Okay, I've said
3 what I want to say.

4 MR. PHILLIPS: Thank you, Your
5 Honor.

6 JUDGE SIPPEL: Let's go. You bet.

7 BY MR. CARROLL:

8 Q So going back to the MFN offer in
9 2006, so do you come to learn from the MFN
10 offer that Tennis Channel has done an
11 agreement with Dish under which they've given
12 Dish equity and now have an agreement to
13 distribute, they being Dish to distribute
14 Tennis Channel?

15 A Yes.

16 Q And is Dish a competitor of yours?

17 A Yes.

18 Q Now in your previous discussions
19 with Tennis Channel that resulted in the 2005
20 deal, had Tennis Channel offered you equity?

21 A No.

22 Q So is this the first you've heard

1 from Tennis Channel of any kind of an offer of
2 equity then, where they're offering their
3 shares to you?

4 A Yes.

5 Q And what's your reaction to it?

6 A We received a proposal. I didn't
7 judge it one way or the other. I asked my
8 team to look at it.

9 Q Okay.

10 A To examine it, analyze it.

11 Q To analyze it.

12 A Analyze it.

13 Q And does the team do an analysis?

14 A Yes.

15 Q And who does the analysis? Where
16 in the company is the analysis done?

17 A I asked Jennifer Gaiski who worked
18 for me to handle the process and then she
19 reached out to some folks in Jeff Shell's
20 group. They were better able to analyze these
21 kind of valuations, to analyze the equity side
22 of the proposal.

1 Q I see. Now Jeff Shell's group, is
2 he is on the cable side or a different side?

3 A He's on the programming side.

4 Q Of Comcast?

5 A Yes.

6 Q And why did you ask his side to
7 evaluate the equity piece, the piece that
8 involves stock?

9 A They had the expertise. I didn't
10 have expertise in valuing the equity.

11 Q And does his group actually do an
12 analysis?

13 A They do.

14 MR. CARROLL: And Your Honor, if
15 you still have the white book and Mr. Bond, if
16 you still have it as well, you may remember I
17 had mentioned some of these documents in the
18 opening, Your Honor. If you turn to Tab C,
19 sir.

20 Mr. Bond, do you see Tab C?

21 THE WITNESS: Yes, I do.

22 BY MR. CARROLL:

1 Q Can you identify for us whether
2 Comcast Exhibit 60, the first document behind
3 that Tab is the -- is a copy of the actual
4 analysis that's done by Mr. Shell's group of
5 this offer the Tennis Channel makes in 2006?

6 A Yes.

7 Q And do you then receive a copy of
8 this and an opportunity to look it over?

9 A I do.

10 Q And what does the analysis
11 indicate? You can refer to any pages that
12 you'd like, but I'd like you to summarize for
13 His Honor what's the bottom line on this
14 analysis?

15 A The bottom line was that the --
16 there were two parts to the deal, increased
17 distribution which came at a cost and the
18 equity. And the conclusion was that the
19 equity was not worth -- the value of the
20 equity was not worth the cost of the increased
21 distribution. So we declined the offer.

22 JUDGE SIPPEL: You're getting into

1 licensing fees?

2 THE WITNESS: Essentially. So the
3 cost of the increased distribution is really
4 the license fees that we would have to pay.

5 JUDGE SIPPEL: Right.

6 THE WITNESS: So that had an
7 amount of money.

8 JUDGE SIPPEL: Correct.

9 THE WITNESS: So that bucket of
10 money was bigger than the value of the equity.

11 MR. KNOWLES-KELLETT: Could you
12 state for the record what Comcast exhibit this
13 is?

14 JUDGE SIPPEL: Sixty.

15 MR. KNOWLES-KELLETT: Oh sure.
16 Okay.

17 JUDGE SIPPEL: He's talking about
18 60.

19 MR. KNOWLES-KELLETT: Okay, sorry.

20 JUDGE SIPPEL: Do you have the
21 right notebook?

22 MR. KNOWLES-KELLETT: I just

1 wanted to make sure it was on the record.

2 JUDGE SIPPEL: That's a good
3 point. Excellent point.

4 BY MR. CARROLL:

5 Q And does this exhibit, Comcast
6 Exhibit 60 set out the actual cost-benefit
7 analysis that was done, sir?

8 A It does.

9 Q Okay, so do you get back to Tennis
10 Channel in some fashion?

11 A Yes. I don't know that I got back
12 to them. I think Jenn probably got back to
13 them and declined the offer.

14 Q Declined the offer?

15 A Yes.

16 Q And what did it mean when you were
17 declining the offer?

18 A It meant that they had made us
19 this MFN offer in compliance with the contract
20 and we were rejecting it. So we were not
21 agreeing to amend the agreement. We weren't
22 agreeing to amend the agreement as set forth

1 in the offer they made us. So the agreement
2 remained unamended.

3 Q I see. Let me clear up that
4 record. You only had a contract with them
5 from the prior year 2005?

6 A Yes.

7 Q Would the terms of this MFN offer
8 have required you to amend that existing
9 contract?

10 A Yes.

11 Q And you declined that invitation
12 to amend the contract?

13 A That's correct.

14 JUDGE SIPPEL: I'm sorry --

15 MR. CARROLL: Please.

16 JUDGE SIPPEL: The contract
17 doesn't expired until when?

18 THE WITNESS: [REDACTED].

19 JUDGE SIPPEL: [REDACTED]. Okay. [REDACTED].

20 All right, all right. That's clear. I think
21 that leaves the record quite clear.

22 Now my question is was it just

1 done in a way that -- Ms. Gaiski and her group
2 did it. They reported the results to you.
3 You looked at it and said well, this does not
4 look good. So you pick up the phone and you
5 say sorry, no deal.

6 Or do you invite -- there would be
7 another way of doing it and that is you know
8 you would invite the Tennis Channel people in
9 and say look, we've got these spread sheets
10 and these are based on numbers you gave us,
11 this is what we come up with. You got
12 something better to show us? There would be
13 two ways of doing this.

14 THE WITNESS: Well, in this case,
15 the numbers were pretty far apart, so we
16 didn't --

17 JUDGE SIPPEL: What numbers are
18 far apart?

19 THE WITNESS: If you looked at the
20 cost, the license fee cost versus the
21 valuation of the equity, there was a big gap
22 between those two numbers. So it didn't seem

1 like it would be worthwhile and the other bit
2 of it is this was an MFN offer. It wasn't
3 necessarily a negotiation, although that
4 sometimes happens. An MFN offer is very
5 straightforward thing. They have an
6 obligation to make us an offer and then we can
7 either accept it or reject it.

8 BY MR. CARROLL:

9 Q Let me see if you can explain
10 that. Did the offer come in a piece of paper
11 or did somebody from Tennis Channel come in
12 and sit down and say we want to talk to you
13 about something?

14 A No, it was a formal piece of
15 paper.

16 JUDGE SIPPEL: Do we have it?

17 MR. CARROLL: Yes, we do, Your
18 Honor.

19 JUDGE SIPPEL: Gosh.

20 MR. CARROLL: You're inviting me
21 to introduce another Exhibit.

22 JUDGE SIPPEL: Is it in the white

1 book?

2 MR. CARROLL: It is not in the
3 white book.

4 JUDGE SIPPEL: Let's have it.

5 MR. CARROLL: Your Honor, may I
6 approach?

7 JUDGE SIPPEL: Please do.

8 MR. CARROLL: This is Comcast
9 Exhibit 87. Your Honor, I'm having some other
10 copies made of this. It's in our exhibit
11 binder, so my friends have it. I'm getting
12 copies. Let's just see if we can pull some
13 out of the binder for you.

14 JUDGE SIPPEL: While you're doing
15 that, I want to ask this question. Again, I'm
16 trying to shorthand this a bit. When you do
17 this analysis then, it would be pretty -- one
18 side of the analysis is pretty straight
19 forward because you've got license fee plus
20 number of shareholders, correct?

21 MR. CARROLL: Number of
22 subscribers.

1 JUDGE SIPPEL: I mean number of
2 subscribers. Thank you. But on the other
3 side of the equation you've got valuation of
4 I guess this will be common stock?

5 THE WITNESS: Yes. They were
6 warrants. It was tricky. That's what
7 required the analysis. And it's a judgment,
8 no question. It's a judgment.

9 JUDGE SIPPEL: Well, that's being
10 very straight forward. Again, could that
11 valuation become the subject of a negotiation?
12 What did you use, what did you use, you know,
13 you go back and forth on something like that?
14 Or is it just -- well, you tell me.

15 THE WITNESS: I think it could be
16 in this case. It seemed pretty straight
17 forward, this -- you can certainly perhaps say
18 our valuation was wrong, it was low, it was
19 high. Maybe others will come up with
20 different numbers, but the numbers were pretty
21 different. And it didn't seem worthwhile to
22 engage in a negotiation or say to them maybe

1 we're looking at the numbers wrong. It didn't
2 seem worthwhile.

3 JUDGE SIPPEL: That's what
4 disturbed me. How could it be that different?
5 You've got very, very capable people that are
6 doing this. It's just -- there's an art and
7 a science to it. But people who are familiar
8 with it can do it. And they're expecting it
9 to be a wide, that they can do -- one side can
10 do it so right and one side can do it so
11 wrong.

12 THE WITNESS: We didn't have -- I
13 think maybe here's the confusion. There was
14 no disagreement necessarily on the valuation
15 of the numbers. So when I was saying the
16 difference in the numbers, I was saying the
17 difference in what the license fees would cost
18 and that was a very straight forward number,
19 as you said. That's just calculating a number
20 versus what the valuation of the equity was,
21 right?

22 So we did a valuation of the

1 equity and we did an assessment of the license
2 fee cost and the equity valuation was much
3 lower than the licensee --

4 JUDGE SIPPEL: I'm following. I'm
5 with you there. But my question is the equity
6 valuation was the one that caused this thing
7 to fall apart. Is that right? I mean you say
8 your equity valuation and their equity
9 valuation was far apart.

10 THE WITNESS: I don't know what
11 their equity valuation is. Maybe this will --
12 I don't know if they did an analysis like this
13 or not. They were simply making us an offer
14 pursuant to the MFN that said here was a
15 different kind of deal we did. This is a deal
16 that was different than the deal we had done -
17 -

18 JUDGE SIPPEL: The deal with
19 DirecTV?

20 THE WITNESS: The Dish deal.

21 JUDGE SIPPEL: The Dish deal.

22 THE WITNESS: And so they were

1 saying to us you have an MFN. It requires us
2 to give you a better deal if we did it. We
3 did this deal with Dish. It involved a
4 different kind of deal. It involved equity.
5 Do you want it or not? So they were not
6 advocating one way or another for it.

7 JUDGE SIPPEL: I see. I see.

8 THE WITNESS: They simply made the
9 offer to us in a very formalized
10 correspondence which is attached. I would
11 imagine they made a very similar offer to the
12 other distributors of The Tennis Channel who
13 had MFNs. I don't know, but I would expect
14 that's probably true. And they sent us this
15 form letter and we examined it internally and
16 we made our judgment and decided to decline
17 it.

18 JUDGE SIPPEL: Would you agree
19 with my characterization that in your world
20 anyway, that's the way MFN is supposed to
21 work, that is, that it's out there and it's
22 offered and it's a yes or no proposition.

1 That's what it's intended to be. If you get
2 into something else, then you're basically
3 renegotiating the underlying contract?

4 THE WITNESS: That's correct.
5 This was handled perfectly appropriately.

6 BY MR. CARROLL:

7 Q And "this" your pointing to is the
8 offer itself, Exhibit 87?

9 A Yes. This is the offer that we
10 received in 2006.

11 MR. CARROLL: Your Honor, I think
12 I handed that up to you. We're still getting
13 --

14 JUDGE SIPPEL: Oh yes. Do you
15 want a copy from us?

16 MR. CARROLL: No, Your Honor.

17 BY MR. CARROLL:

18 Q I just wanted -- let me ask a
19 question about it which is is there is a
20 yes/no box basically in the form that was sent
21 to you?

22 A Yes, if you turn to -- if you

1 could turn to page five of that document, I
2 can show it to you.

3 JUDGE SIPPEL: Comcast 87, I want
4 to say is this already in evidence?

5 MR. CARROLL: Yes, it is, Your
6 Honor.

7 JUDGE SIPPEL: It came under the
8 general.

9 MR. CARROLL: It is already in
10 evidence. Is it in the exhibit binders?

11 JUDGE SIPPEL: We're getting
12 copies somehow.

13 MR. CARROLL: Everybody has got
14 it.

15 JUDGE SIPPEL: I don't have it.
16 Mr. Bond and I are sharing.

17 THE WITNESS: You'll see this MFN
18 provision.

19 JUDGE SIPPEL: Option A.

20 THE WITNESS: Equity carriage
21 incentive and you'll see it says accept option
22 A, check the box, sign it and then it says

1 return this form.

2 JUDGE SIPPEL: It speaks for
3 itself if that's the way it was presented.
4 Sometimes documents like that, it generates.
5 It could be one of two things for the person
6 making the offer, either they're going to get
7 it back checked yes or you're not going to get
8 it back and they just turn it down or the
9 other side calls up and says well, I've got
10 this problem with it or that problem with it.
11 But this is not what that's all about. Is
12 that correct?

13 THE WITNESS: Yes, that's right.
14 That could potentially happen. If we were
15 inclined to accept this that we had a small
16 problem with it one way or another. We said
17 we'll sign this, but we want to change this
18 word here to that word, then I would have had
19 that discussion and --

20 JUDGE SIPPEL: Okay, I'm with you.
21 I'm with you.

22 BY MR. CARROLL: